IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

S.B. CIVIL WRIT PETITION NO. 2341/2003.

MADAN SINGH VS. STATE & ORS.

DATE OF ORDER : 16.03.2005.

HON'BLE MR. JUSTICE R.P. VYAS

Mr. R.S. Chauhan for the petitioner.
Mr. Rameshwar Dave, Dy.Govt. Advocate.

The instant writ petition has been filed by the petitioner with a prayer that by an appropriate writ, order or direction, the impugned orders dated 30.11.1995 (Annex.3), 03.5.1996 (Annex.4) and 23.10.1997 (Annex.5) may kindly be quashed and set aside with all consequential benefits.

Brief facts giving rise to the instant petition are as follows:

The petitioner while working as L.D.C. under the respondent No.3, was served with a memorandum alongwith charge sheet dated 6.10.1995 (Annexure 1) under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal)

Rules, 1958 (hereinafter referred to as "the Rules, 1958").

The petitioner filed the reply dated 10.11.1995 (Annexure 2) to the above mentioned charge sheet within the time prescribed by the respondent No.3, denying the charge levelled against him, on the ground that Laxman Singh, UDC (Force-Clerk) was on leave w.e.f. 16.5.95 to 22.8.95 and there was no order in writing to look after his work, in his absence. It was further replied that no handing over/taking over the charge has taken place between the petitioner and Laxman Singh.

It was also replied that the work of Cashier was also given to the petitioner as an additional work and he was carefully doing the said work alongwith his daily routine official work.

It was alleged in the reply that the application was submitted by Sh.Magna Ram, Constable, through proper channel, for forwarding the same to the higher authorities, i.e.,

Assistant Sub-Inspector, Intelligence. It was also alleged that no specific date and name of the examination has been shown on the said application. Even if the said application is related to the examination and was also urgent in nature, then there was an option for Magna Ram, Constable to take the necessary permission from the Commandant and not to submit the same as a routine application.

Lastly, the petitioner averred in his reply that he was not having any ill-will in his mind against said Magna Ram, Constable and has not intentionally kept his application pending. He prayed that the charge levelled against him is baseless and devoid of merits.

The respondent No.3 vide order dated 30.11.1995 (Annex.3) imposed the penalty upon the petitioner of withholding of one grade increment without cumulative effect.

Being aggrieved by the order Annexure 3, the petitioner preferred an appeal before the respondent No.2 and the same was rejected vide

order dated 3.5.1996 (Annexure 4).

The petitioner, thereafter, being aggrieved by the order Annexure 4, preferred a review petition before His Excellency the Governor alleging all the facts and circumstances of the case, but the same was also rejected vide order dated 23.10.1997 (Annexure 5).

Being aggrieved by the orders Annexures 3, 4, and 5, the petitioner has filed the instant writ petition.

Heard learned counsel for the parties at length.

It is submitted by the learned counsel for the petitioner that the penalty imposed on the petitioner is without application of mind by the departmental authorities and the defence of the petitioner has not been taken into consideration in its right perspective.

The next submission made by the learned counsel for the petitioner is that the proceedings

initiated against the petitioner under Rule 17 of the Rules, 1958, were not in accordance with the law.

The charge levelled in the charge-sheet is base-less and cannot be made out against the petitioner, as the petitioner was not holding the charge of the post of Force-Clerk and no handing over/taking over of charge has taken place.

It is further submitted by the learned counsel for the petitioner that the petitioner has pleaded each and every aspect of the matter in his reply, but the respondents have not provided any proper opportunity of hearing to the petitioner. The respondents have arbitrarily imposed the aforesaid penalty on the petitioner.

Thus, the said action of the respondents is, illegal, arbitrary and against the mandate of Article 14 of the Constitution of India.

Lastly, it was submitted that the petitioner is an innocent person and always worked under the bonafide impression and never committed

any in-discipline towards his work and prayed that the charge levelled against the petitioner is baseless and deserves to be quashed and set aside.

Controverting the aforesaid submissions made by the learned counsel for the petitioner, learned counsel appearing on behalf of the respondents submitted that it was the duty of the petitioner to perform his duties when senior employee is on leave. It was also the duty of the petitioner to put up the application of the Constable, Magna Ram, before higher authorities-competent authorities, for disposal of the same, but he could not place the said application before the competent authorities. It shows carelessness on the part of the petitioner.

Learned counsel for the respondents further submitted that the petitioner cannot be absolved from the responsibility, by merely saying that there was an option before Magna Ram, Constable, to take the necessary permission from the Commandant and not to submit the same as a routine application. It was also submitted that there was no necessity to pass a specific order,

as it was the duty of the petitioner to look after the official work in absence of leave of his senior employee.

It is also contended by the learned counsel appearing on behalf of the respondents that the penalty of withholding of one annual grade increment without cumulative effect was imposed after applying judicious mind and considering the reply submitted by the petitioner as well as the material available on record.

Lastly, it was submitted that the respondent-authorities have passed a concrete and speaking order, after considering the case as well as the defence of the petitioner in right perspective. Thus, the action of the respondents cannot be said to be illegal, arbitrary and against the mandate of Article 14 of the Constitution of India.

I have considered the rival submissions advanced by the learned counsel for the parties and have gone through the findings arrived at by the respondent authorities.

From a bare perusal of the aforesaid impugned orders, it appears that the application submitted by the Constable Magna Ram was duly received by the petitioner for forwarding the same before the higher authorities, but the same was kept pending and was not submitted before the higher authorities within time. As a result of which, the Constable, Magna Ram, could not appear in the Departmental Examination, for further promotion, because of the negligence on the part of the petitioner. Thus, the petitioner failed to forward the application of the Constable Magna Ram to the concerned authority in appropriate time. This negligent act of the petitioner was proved beyond doubt and, accordingly, the impugned orders were passed by the disciplinary authorities, after proper application of mind. This fact finding inquiry, which has been arrived at by the respondent authorities, cannot be substituted by this Court in the scope of judicial review while sitting as a Court of appeal, unless the same appears to be contrary.

I do not find any illegality or material irregularity in this matter, which calls for any

interference by this Court under Article 226 of the Constitution of India.

There is no procedural defect, in conducting the Departmental Enquiry. Apart from that there is no violation of Article 311 of the Constitution of India as well as principles of natural justice.

Similarly, the Appellate Authority as well as the Reviewing Authority, while passing the aforesaid impugned orders, have given sound and concrete findings, after taking into consideration all the facts and circumstances of the case.

I do not find any illegality or infirmity in the impugned orders, passed by the respondent-authorities.

In view of the discussion made hereinabove, this writ petition has no force and is liable to be dismissed.

Accordingly, the writ petition is dismissed at the admission stage. There shall be no order as to costs.

(R.P. VYAS)J.